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11/12/05

[Faint, mostly illegible text covering the majority of the page, likely a memorandum or report body.]

Deputy S. Pitts (CS)

RETURN OF SERVICE

RECEIPT NUMBER: 0001185-05

PERSON TO BE SERVED: BENJAMIN D. BRIENZA
CORP/DBA:
ADDRESS: 1122 NORTH LION CUB PATH
LECANTO

PLAINTIFF: ELAINE L. CHAO, SECRETARY OF LABOR, ET AL

-VS-

DEFENDANT: R. & B. FOODS, INCORPORATED AND BENJAMIN D. BRIENZA

KELLY M. LAWSON
UNITED STATES DEPARTMENT OF LABOR
JOHN F. KENNEDY BUILDING
BOSTON, MA 02203

PLAINTIFF/ATTORNEY

CASE NUMBER: 05 11523 RWZ
COURT: U.S. DISTRICT COURT

COURT DATE:

TYPE WRIT: SUMMONS IN A CIVIL CASE AND COMPLAINT

Received the above-named writ on July 22, 2005 at 1:31 PM and served the same at 01:30 PM on July 28, 2005 in CITRUS County, Florida, as follows:

INDIVIDUAL

By delivering a true copy of this writ together with a copy of the initial pleadings, if any, with the date and hour of service endorsed thereon by me, to: BENJAMIN D. BRIENZA

CIVIL COSTS

FEE: \$ 30.00

TOTAL DEPOSIT: \$ 30.00

LS

JEFFREY J. DAWSY, SHERIFF
CITRUS COUNTY, FLORIDA

BY: PITTS

Deputy S. Pitts (CS)
DEPUTY SHERIFF

DEPUTY'S WORKSHEET

RECEIPT NUMBER: 0001185-05
DATE: 07-22-05

PERSON TO BE SERVED: BENJAMIN D. BRIENZA
CORP/DBA:
ADDRESS: 1122 NORTH LION CUB PATH
LECANTO

PLAINTIFF: ELAINE L. CHAO, SECRETARY OF LABOR, ET AL

-VS-

DEFENDANT: R. & B. FOODS, INCORPORATED AND BENJAMIN D. BRIENZA

CASE NUMBER: 05 11523 RWZ
COURT: U.S. DISTRICT COURT

ASSIGN TO: OFFICE
COURT DATE:

TYPE WRIT: SUMMONS IN A CIVIL CASE AND COMPLAINT

ATTEMPTED SERVICE	HOW SERVED	
	(A)	
	DATE: 7 28 05	TIME: 1330

BY:

S Pims

DEPUTY SHERIFF

Should be in Judge Sherman's Court
@ 1:30 pm today.

LS

1185-05

UNITED STATES DISTRICT COURT

District of

MASSACHUSETTS

ELAINE L. CHAO, Secretary of Labor,
UNITED STATES DEPARTMENT OF LABOR,

PLAINTIFF,

V.

R. & B. FOODS, INCORPORATED and
BENJAMIN D. BRIENZA,

DEFENDANTS.

SUMMONS IN A CIVIL CASE

05 11523 RWZ

CASE NUMBER:

TO: (Name and address of Defendant)

Benjamin D. Brienza
1122 North Lion Cub Path
Lecanto, Florida 34461

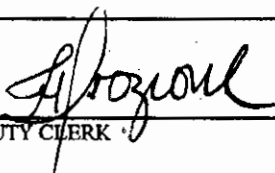
YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Attorney Kelly M. Lawson
Office of the Regional Solicitor
JFK Federal Building - Room E-375
Boston, Massachusetts 02203

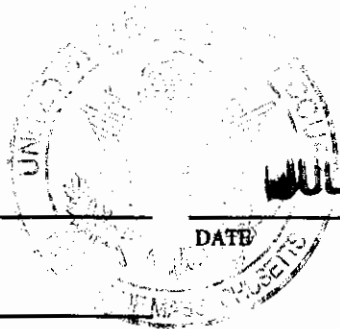
an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

SARAH A. THORNTON

CLERK



(By) DEPUTY CLERK



DATE

JUL 15 2005

UNITED STATES DISTRICT COURT **COPY**

District of MASSACHUSETTS

ELAINE L. CHAO, Secretary of Labor,
UNITED STATES DEPARTMENT OF LABOR,

PLAINTIFF,

SUMMONS IN A CIVIL CASE

V.

R. & B. FOODS, INCORPORATED and
BENJAMIN D. BRIENZA,
DEFENDANTS.

05 11523 RWZ
CASE NUMBER:

CIVIL DEPARTMENT
JUL 19 2005

TO: (Name and address of Defendant)

R. & B. Foods, Incorporated
Attention: Benjamin D. Brienza, President
1122 North Lion Cub Path
Lecanto, Florida 34461

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Attorney Kelly M. Lawson
Office of the Regional Solicitor
JFK Federal Building - Room E-375
Boston, Massachusetts 02203

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

SARAH A. THORNTON



CLERK

(By) DEPUTY CLERK

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

105
COPY

ELAINE L. CHAO, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

R & B FOODS, INC.; BENJAMIN D. BRIENZA,

Defendants.

CIVIL ACTION

FILE NO.

1 1523 23377

COMPLAINT

Elaine L. Chao, Secretary of the United States Department of Labor, hereby alleges:

1. This action arises under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, and is brought pursuant to ERISA § 502(a)(2) and (5), 29 U.S.C. § 1132 (a)(2) and (5) to redress violations and to enforce the provisions of Title I of ERISA.

2. The Court has subject matter jurisdiction over this action pursuant to Section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1).

3. Venue of this action lies in the District of Massachusetts pursuant to Section § 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

4. Defendant R & B Foods, Inc. ("R&B") was, during the period from January 1, 2000 through December 2002, an employer within the meaning of ERISA § 3(5), 29 U.S.C. § 1002(5).

5. From January 2000 through December 2002, Defendant R&B was a corporation with an office and place of business in Haverhill, MA, within the jurisdiction of this Court. Defendant R&B ceased operations in December 2002.

6. From January 2000 through the present (the "pertinent period"), Defendant Benjamin D. Brienza ("Brienza"), has been the President and sole owner of Defendant R&B. Defendant Brienza currently resides at 1122 North Lion Cub Path, Lecanto, Florida 34461.

7. On January 1, 1999, Defendant R&B established the R & B Foods, Inc. 401(k) Profit Sharing Plan (the "Plan"), an employee pension benefit plan within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A), and which is covered under ERISA pursuant to § 4(a), 29 U.S.C. § 1003(a).

8. The purpose of the Plan is to provide retirement benefits for the exclusive benefit of its participants, employees of Defendant R&B, and their beneficiaries.

9. During the pertinent period, Defendant R&B has been the Plan Sponsor, as defined by ERISA § 3(16)(B)(i), 29 U.S.C. § 1002(16)(B)(i), and Plan Administrator and a named fiduciary pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1).

10. During the pertinent period, Defendant R&B, as the Plan Sponsor and Plan Administrator, exercised discretionary authority or discretionary control respecting management of the Plan and discretionary authority or discretionary control respecting management or disposition of the Plan's assets, and had discretionary authority or discretionary responsibility in the administration of the Plan. Therefore, Defendant R&B was, during the pertinent period, a fiduciary to the Plan as that term is defined in Section 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A).

11. During the pertinent period, Defendant R&B was a party in interest within the meaning of ERISA § 3(14)(A) and (C), 29 U.S.C. § 1002(14)(A) and (C).

12. During the pertinent period, Defendant Brienza has been a Trustee of the Plan and a “named fiduciary” with respect to the Plan within the meaning of ERISA § 402(a), 29 U.S.C. § 1102(a).

13. During the pertinent period, Defendant Brienza exercised discretionary authority or discretionary control respecting management of the Plan and discretionary authority or discretionary control respecting management or disposition of the Plan’s assets, and had discretionary authority or discretionary responsibility in the administration of the Plan. Therefore, Defendant Brienza was, during the pertinent period, a fiduciary to the Plan as that term is defined in Section 3(21) of ERISA, 29 U.S.C. § 1002(21).

14. During the pertinent period, Defendant Brienza has been a party in interest within the meaning of ERISA § 3(14)(A), (E) and (H), 29 U.S.C. § 1002(14)(A), (E) and (H).

15. According to Plan documents, the Plan was to be funded by withheld employee contributions each pay period as determined by participant elections in amounts ranging up to the maximum percentage allowable under the Internal Revenue Code.

16. During the pertinent period, the contributions withheld on behalf of each Plan participant became assets of the Plan by operation of 29 C.F.R. § 2510.3-102.

17. The Plan document states that no part of the Plan Trust Fund, which includes employee contributions, may be used for, or diverted to, purposes other than for the exclusive benefit of participants and beneficiaries and that the Plan was required to be administered in accordance with the terms of ERISA.

18. From January 2000 through and including June 2000, Defendants failed to forward withheld employee contributions in a timely manner.

19. Defendants failed to remit withheld employee contributions to the Plan from on or about July 2000 through December 2000. The unremitted employee contributions totaled approximately \$9,400 and are due and owing to the Plan.

20. On October 5, 2001, Defendant Brienza caused a distribution check to Participant Brian Murphy, in the amount of \$6,390.15, to be deposited into Defendant R&B's business account.

21. Defendants never transferred the \$6,390.15 of Plan assets to Participant Murphy.

22. On or about February 4, 2002, Defendant Brienza caused all of the Plan's assets, totaling approximately \$47,000, to be withdrawn from Oppenheimer Funds, the Plan's Custodian, and deposited into Defendant R&B's business checking account at Banknorth.

23. Approximately \$18,100 of the \$47,000 belonged to Participants other than Defendant Brienza.

24. Plan assets that were improperly transferred to R & B, and employee contributions that were withheld but not forwarded to the Plan, excluding Defendant Brienza's contributions and account balance, total approximately \$34,000, plus interest, and are due and owing to the Plan.

25. From July 2000 to the present, no measures were undertaken by Defendants, as fiduciaries to the Plan, to collect Plan assets that were improperly transferred to R&B or to collect employee contributions that Defendants failed to forward to the Plan.

26. As a result of the conduct set forth at paragraphs 18 through 25, Defendants failed to discharge their fiduciary duties for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA §§ 403(c)(1) and 404(a)(1)(A), 29 U.S.C. §§ 1103(c)(1) and 1104(a)(1)(A).

27. As a result of the conduct set forth at paragraphs 18 through 25, Defendants failed to discharge their fiduciary duties with the required degree of care, skill, prudence and diligence, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

28. As a result of the conduct set forth at paragraphs 18 through 25, Defendants failed to act in accordance with the Plan document, in violation of ERISA § 404(a)(1)(D).

29. As a result of the conduct set forth at paragraphs 18 through 25, Defendants engaged in prohibited transactions by causing or permitting the transfer of assets of the Plan to, or use of plan assets by or for the benefit of Defendant R&B, a party in interest, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

30. As a result of the conduct set forth at paragraphs 18 through 25, Defendants participated in what they knew or should have known constituted prohibited transactions by dealing with the assets of the Plan in their own interest or for their own account, in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1).

31. As a result of the conduct set forth at paragraphs 18 through 25, Defendants participated in what they knew or should have known constituted prohibited transactions by dealing with the assets of the Plan on behalf of a party whose interests were adverse to the interests of the Plan and its Participants and Beneficiaries, in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

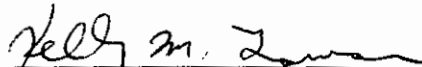
WHEREFORE, the Secretary of Labor prays that this Court enter an Order:

- (a) Permanently enjoining Defendants from violating, or knowingly participating in violations of, the provisions of ERISA §§ 403, 404 and 406, 29 U.S.C. §§ 1103, 1104 and 1106.

- (b) Permanently enjoining Defendants from serving as fiduciaries to the Plan or any other employee benefit plan covered by ERISA;
- (c) Requiring Defendants to undo the prohibited transactions in which they engaged and to restore to the Plan any and all losses incurred as a result of breaches of their fiduciary duties and the violations they committed or for which they are liable, with appropriate interest;
- (d) Appointing an independent fiduciary to terminate the Plan and distribute Plan assets to Plan Participants;
- (e) Awarding to Plaintiff the costs of this action, and other relief as is equitable and just.

Howard M. Radzely
Solicitor of Labor

Frank V. McDermott, Jr.
Regional Solicitor


Kelly M. Lawson
Attorney

U.S. Department of Labor
Attorneys for Plaintiff

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FAX: (617) 565-2142

DATE: July 18, 2005